Supreme Court, U.S.
FILED
DEC 23 1993
OFFICE OF THE CLERK

(4)

No. 93-560

In the Supreme Court of the United States

OCTOBER TERM, 1993

PUBLIC CITIZEN AND SIERRA CLUB, PETITIONERS

v.

UNITED STATES TRADE REPRESENTATIVE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

TABLE OF AUTHORITIES

	Page
Cases:	
City of Los Angeles v. *Lyons*, 461 U.S. 95 (1983)	3
Weinstein v. *Bradford*, 423 U.S. 147 (1975)	3
Statute:	
Omnibus Trade and Competitivenss Act of 1988, 19 U.S.C. 19 U.S.C. 2903(a)(1)	2
Miscellaneous:	
58 Fed. Reg. (1993):	
p. 67,264	2
p. 67,267	2, 3
p. 67,268-67,302	2
p. 67,269	2

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-560

PUBLIC CITIZEN AND SIERRA CLUB, PETITIONERS

v.

UNITED STATES TRADE REPRESENTATIVE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

Pursuant to Rule 15.7 of the Rules of this Court, the Solicitor General, on behalf of the United States Trade Representative, submits this supplemental brief to advise the Court of recent actions by the President that were anticipated in our brief in opposition to the petition for a writ of certiorari.

1. Subsequent to the filing of our brief in opposition, the President announced significant developments in the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). See U.S. Br. in Opp. 14 n.4 (noting possibility of an agreement in pending Uruguay Round negotiations). Those negotiations began in 1986 and involve more than 100 participating countries. On December 15, 1993, the

President announced that "[a]fter seven long years the conclusion of the Uruguay Round of multilateral trade negotiations is at hand." Letter from the President of the United States to the President of the Senate (Dec. 15, 1993), *reprinted at* 58 Fed. Reg. 67,264 (1993). Accordingly, pursuant to the fast-track procedures of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 2903(a)(1), the President provided notice to Congress of his intent to enter into the agreements resulting from those negotiations on April 15, 1994. 58 Fed. Reg. 67,267 (1993).

The Uruguay Round negotiations have not yet resulted in a final agreement text. Rather, the negotiations have yielded agreement in principle in 21 of the major areas addressed in the negotiations. See 58 Fed. Reg. 67,268-67,302 (1993) (executive summary of the results of the negotiations). Negotiations to resolve outstanding differences and to seek further agreements will continue between now and April 15, 1994. For example, the United States intends to seek further commitments in market access negotiations that will take place between now and February 15, 1994, which is the deadline for submission of draft tariff schedules. See *id.* at 67,269. For this reason, the President cautioned that considerable work remains before an agreement and any needed implementing legislation will be ready for submission to Congress:

> In order to ensure more open, equitable and reciprocal market access, in certain agreements we have made U.S. obligations contingent on receiving satisfactory commitments from other countries, and we will continue to work to ensure that the best possible agreement for the United

> States is achieved. I will not enter into any agreement unless I am satisfied that U.S. interest[s] are protected.

Id. at 67,267.

2. As we explain in our brief in opposition (Br. in Opp. 12-15), petitioners' challenges to the North American Free Trade Agreement (NAFTA) are moot, and this case is not one that is "capable of repetition, yet evading review." The President's notice concerning the Uruguay Round does not undermine the validity of our mootness argument.

a. The existence of an agreement in principle in the Uruguay Round of trade negotiations does not demonstrate that petitioners' challenge to the North American Free Trade Agreement is "capable of repetition." Even if this Court assumes that the continuing negotiations among the parties to the Uruguay Round will result in a completed and final text of an agreement for the President's signature by April 15, 1994, there is no basis on the current record on which to determine how any such new agreement would affect petitioners. Accordingly, there can be no "reasonable expectation that the same complaining party would be subjected to the same action again." *Weinstein* v. *Bradford*, 423 U.S. 147, 149 (1975); see also *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 109 (1983).

As explained in our brief in opposition (Br. in Opp. 15), petitioners' claim to standing in this case was premised on two types of injuries to their members: (1) harms to members exposed to environmental conditions along the United States-Mexico border that allegedly might be exacerbated by adoption of NAFTA; and (2) harms to members from possible

displacement of United States environmental, health, and safety laws that might result if specific terms of NAFTA are construed to conflict with those laws. Pet. App. 23a-28a. With regard to the first type of asserted harm, there is no basis on which to assume that a Uruguay Round agreement, which would encompass trade among more than 100 nations spanning every inhabited continent in the world, would threaten harms to petitioners' members that are the same as, or even comparable to, those that petitioners attribute to NAFTA. The latter agreement encompasses trade among three nations on one continent and uniquely affects a border region suffering from acute environmental problems. The record on those alleged harms, as it stands, thus does not support any claim that petitioners may again be subjected to the same injuries as a result of a final Uruguay Round agreement.

With regard to the possible effect on United States laws of a final Uruguay Round agreement, there is at present no basis for determining whether the text of such an agreement would have an effect on those laws that would be in any sense comparable to the impact that petitioners attribute to NAFTA. To the extent that the consequences of the new agreement may be different, the current record obviously is inadequate for this Court to determine whether those consequences would give rise to a cognizable harm at all, let alone a "repetition" of the harm identified with NAFTA. To the extent that those consequences may be similar, the current record is also inadequate, because there is no actual text of a Uruguay Round agreement or implementing legislation that would permit the Court to determine whether that agreement might threaten any harm to petitioners beyond

that already presented by existing law as modified by NAFTA and its implementing legislation. In short, there is no basis for concluding from the agreement in principle reached in the Uruguay Round that petitioners' allegations of injury from NAFTA are capable of repetition, or indeed that petitioners will even have standing to challenge a final Uruguay Round agreement.

b. In addition, the prospect of an agreement in the Uruguay Round provides no basis on which to assume that any NEPA claims asserted by petitioners with respect to the forthcoming agreement will evade judicial review. Under the fast-track procedure, the President's submission of the agreement to Congress is not expected before April 15, 1994, and the President has discretion to postpone submission of the agreement and any implementing legislation as he deems appropriate. Indeed, NAFTA itself was not submitted to Congress until more than a year after the initial statutory notice to Congress. Thus, there will be time for petitioners to assert any challenges they may have to a final Uruguay Round agreement, and for judicial review of those challenges (and of the government's countervailing contentions).

Accordingly, petitioners' claims are not "capable of repetition, yet evading review," and review by this Court is not warranted.

For the reasons set forth above and in our brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

DECEMBER 1993